

## REMARKS

In the Office Action, the Examiner objected to the abstract, objected to claims 1 – 50, rejected claims 1 – 50 under the second paragraph of section 112, rejected claims 1 – 50 for obviousness double patenting, and rejected claims 1 – 50 as anticipated by Doyle.

### **Abstract Objection**

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37 CFR 1.72(b) requires a brief abstract of the technical disclosure in the specification to enable the public to determine the nature and gist of the technical disclosure. Contrary to the Examiner's assertion, no mention is made of providing an abstract directed to the currently pending claims. The MPEP section cited by the Examiner does not require amendment of the abstract upon election of claims in a restriction requirement and as such the objection is in error and should be withdrawn. The abstract has not been amended.

### **Claim Objection**

The claims have been amended to overcome the objection.

### **35 USC §112, 2<sup>nd</sup> ¶**

Claims 2, 4 and 5 have been amended to overcome the 112 rejection.

### **Double Patenting**

A terminal disclaimer is submitted herewith to overcome the obviousness type double patenting rejection.

### **35 USC §102(b)**

The Examiner cites the Doyle reference without identifying where in the lengthy reference the claimed invention is disclosed. 35 USC 1.104(c) provides that,

“When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”

A citation to Figures 1A – 74 and columns 12 – 178 is not specific enough to provide a prima facie basis for the rejection. In view of the large size of the reference (272 pages) and the Examiner's failure to point to even one passage in the text, one element in the drawings or even one figure in the reference that discloses the claimed invention, the rejection is wholly

without support, fails to meet the requirements established by the patent rules, and should be withdrawn.

#### **Petition for No Second Action Final**

Applicant hereby petitions for no second action final rejection in the present application.

The May 12, 2008, action lacks a substantive examination of the invention in view of the prior art. The single prior art reference relied on by the Examiner is cited only as to Figures 1A – 74 and columns 12 – 178, without any specific citation to a passage of text or to elements of the drawings or even to individual drawing figures so that the action does not constitute an action on the merits.

A second action final rejection is only appropriate when the merits of the invention have been examined in the first action. MPEP 706.07(a) states, “Under present practice, second or any subsequent actions on the merits shall be final,” after which exceptions are cited. Here, a second action final would be premature since there has been no first action “on the merits”. Any second action in this case should be made non-final.

The present petition requires no fee and none is submitted.

#### **Additional Art**

The additional art cited by the Examiner but not relied upon is noted by the Applicants.

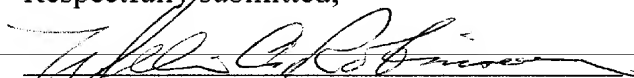
#### **Conclusion**

Applicants respectfully request favorable reconsideration and allowance of the present application in view of the forgoing.

**Deposit Account Information**

The Commissioner is hereby authorized to charge any additional fees which may be required or to credit any overpayment to account no. 501519.

Respectfully submitted,



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